TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~555~~ 149

B. F. MESSENGER, E. J. MESSENGER, AND JAMES MAY, PLAINTIFFS IN ERROR,

vs.

CHARLES MASON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED DECEMBER 11, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 353.

B. F. MESSENGER, E. J. MESSENGER, AND JAMES MAY, PLAINTIFFS IN ERROR,

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IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Petition	1	1
Answer of B. F. Messenger	1	1
Affidavit of J. May, and exhibits	2	6
Order of court	3	15
Amended answer	4	17
Jury sworn	6	18
Instruction to jury	8	19
Verdict	11	21
Judgment	11	21
First bill of exceptions—judgment of partition	12	21
Second bill of exceptions	28	26
Judgment of supreme court of Iowa	37	30
Order of court	40	31
Certificate of judge	41	32
Clerk's certificate	42	32
Citation and service	43	32
Writ of error	45	33

1 Be it remembered that heretofore, to wit, on the 4th day of April, A. D. 1864, there was filed in the office of the clerk of the supreme court of Iowa a transcript in words and figures following, to wit:

Copy.

STATE OF IOWA, *Van Buren County:*

Pleas before the district court of Iowa, at a term begun and holden in the county of Van Buren, on the third Monday of June, A. D. 1863, before the Hon. H. H. Trimble, judge of the second judicial district of the State of Iowa.

CHARLES MASON
vs.
B. F. MESSENGER ET AL.

Be it remembered that heretofore, to wit, on the 14th day of August, A. D. 1856, a petition was filed in the office of the clerk of the district court in and for the county of Van Buren, in the words and figures following, to wit:

STATE OF IOWA, *Lee County:*

To the district court of said county, September term, 1856:

Your petitioner, Charles Mason, states that he is the legal owner of the following described real estate in said county, to wit:

The fractional southwest quarter of section 19, and fractional west one-half of section 30, in township 65 north, range four west, and that he is entitled to the present and immediate possession thereof.

He further states that B. F. Messenger, John Fowler, William Fowler, and Joel Johnson, the defendants, unjustly and illegally detain the said real estate from your petitioner, and have received the rents and profits thereof to their own use for five years past, and have cut timber and committed other trespasses and injuries on said property to the loss and damage of your petitioner five hundred dollars.

Whereof your petitioner prays for judgment for the recovery of the possession of said real estate, and for his damages and costs aforesaid.

(Signed) CHARLES MASON.

RANKIN & MILLER *for Plaintiff.*

I hereby acknowledge myself as security for costs in the foregoing suit.

(Signed) JA'S L. ESTES.

And afterwards, to wit, on the 12th day of September, A. D. 1856, there was filed in the office of the said clerk an answer in words and figures following, to wit:

In dist. court at Keokuk.

CHARLES MASON
vs.
B. F. MESSENGER. } Action of right.

And now comes B. F. Messenger, one of the said defendants, and, for answer to plaintiff's petition, states:

That he denies, specifically and generally, the several allegations in said petition mentioned.

That if said plaintiff has any title to said land, (of which, however, he requires due proof,) it is based upon and derived from a certain decree of partition made in the district court of Lee County, Iowa Territory, at Fort Madison, on the 8th day of May, 1841, in a suit wherein Josiah Spalding et al. were plaintiffs, and Euphrosine Antaya et al. were defendants.

That said decree of partition was illegal, fraudulent, and void for reasons following, to wit:

The partition law of the then Territory of Iowa, approved 4th of January, A. D. 1839, entitled "An act for the partition of real property," was unconstitutional and void.

That, if constitutional and authoritive, its provisions were not complied with.

That the court, by whom said decree purports to have been made, had no jurisdiction of the case, no service of notice having been made on any of defendants named, or not named, in said suit, although they resided on the land in Lee County, and their interests were fully known to the plaintiffs in the case.

That no proof of publication was made in the case as required by law.

That many persons interested in the said land at the time resided out of the Territory, some of whom were infants; none of whom were bound by said proceedings.

That said court had adjourned sine die on the evening of the 8th of May, 1841, before said decree was assented to, which was at a late hour in the night.

That said decree was not an adjudication of the court, but a compromise between the parties to the proceedings, and parties not in court at all, and imposed upon the court as fair, honest, legal, and equitable, when, in truth, it was neither.

That said court made no examination of the case in any manner whatever, but relied wholly upon the representation of the parties and their counsel; was thereby deceived and induced to sign said decree, when he could not have been induced to do so upon investigation.

That many persons had genuine titles to valid shares, and parts of shares, in the lands covered by said decree, the deeds for which were not on record in the proper office at the time, which was well known to all the parties who were not represented in court.

That many persons in attendance at court at the time, and who had interests and were not disposed to enforce them, were fraudulently told that said partition suit, which resulted in said decree, could not and would not be tried at that term, and were thereby induced to go home and neglect the same.

That, during the court, the persons, or some of them, whilst making the public impression that said suit could not and would not be tried at that term, covinously, secretly, and fraudulently planned and prepared the said compromise, drew up a decree to suit themselves, and, at a late hour of the night of Saturday, 8th of May, 1841, when all persons had left the court and the town of Fort Madison who could do so, and were not in the plot, presented the same to the court, and, by means aforesaid, induced him to sign the same.

That many persons thus participated in said proceedings and drew a portion of said land who had no genuine title thereto; others drew more than they claimed, whilst many drew less; and some drew lands they did not claim in their pleadings and title papers filed to support them.

That attorneys engaged in effecting said compromise represented parties who did not employ them to do so, and who had no existence.

That attorneys interested in said proceedings filed claims to a large portion of said land at a late hour of the 8th of May, 1841, after many persons interested had fraudulently been induced to leave the court, which would have been resisted if the parties notified of the proceedings had known of their existence.

That, in framing said decree, said parties purposely avoided setting out the names of the persons in whose right, as half-breeds, they drew their lands, each one taking such portions as was agreed upon, without regard to what he owned or had claimed by plea and title filed in the case.

That the parties to said proceedings, or their counsel, well knew of many valid and recorded titles to shares in said half-breed lands that were not represented; should have made them known to the court, but did not do so, for the fraudulent purpose of appropriating the whole to their own use.

That there are many outstanding valid interests in said lands that must yet be recognized and allowed, and said decree be opened for that purpose.

That the effect of said decree is to manufacture title, and not to sever and separate the portions owned in common.

Defendant, answering further, denies committing waste, or cutting timber, or being liable in any other manner whatever.

Defendant states that he held said land by right of occupancy and actual adverse possession, for the length of time limited by law, by genuine title derived from an original half-breed of the Sac and Fox tribe or nation of Indians, and by title derived by virtue of the occupying claimant law from the State of Iowa.

Wherefore he prays to be dismissed, with his costs.

MARSHALL & MOSS,
For Defendants.

And afterwards, to wit, on the 22d day of June, A. D. 1860, there was filed in the office of the said clerk an amended answer in words and figures following, to wit:

District court of Lee County, State of Iowa, at Fort Madison.

CHARLES MASON
vs.
B. F. MESSENGER ET AL. } Action of right.

And now comes the said B. F. Messenger, one of the defendants to the petition of the said plaintiff, Charles Mason, and, by leave of the court first had and obtained for that purpose, now files his amended answer to said plaintiff's petition. The said defendant, B. F. Messenger, for himself answering, states that he denies each and every material allegation in plaintiff's petition contained, so far as said allegations relate to or affect the fractional west one-half of section number thirty, in township number sixty-five north, range four west, part and parcel of the said lands and tenements in the petition of the said plaintiff, Charles Mason, demanded.

The said defendant, for himself further answering, denies that the said plaintiff, Charles Mason, is the legal owner of the said fractional west one-half of section number thirty, township number sixty-five north,

range four west, part and parcel of the said lands and tenements in the petition of said plaintiff, Charles Mason, demanded, in manner and form as therein set forth; and of this the said defendant puts himself upon the country.

The said defendant, for himself further answering, denies that he unjustly and illegally detains the said real estate, or lands and tenements, last aforesaid, to wit, the west one-half of section number thirty, in township number sixty-five north, of range four west, part and parcel of the said lands and tenements in the petition of the said plaintiff, Charles Mason, demanded; and of this said defendant puts himself upon the country.

The said defendant, for himself further answering, denies that the said plaintiff, Charles Mason, is the owner in fee of said lands and tenements last aforesaid. And this defendant, for himself further answering, denies that the said plaintiff, Charles Mason, was, at the commencement of this suit, or is now, entitled to the present and immediate possession of the said fractional west one-half of section number thirty, township number sixty-five north, of range four west, part and parcel of the lands and tenements in the petition of the said Charles Mason demanded, in manner and form as is therein set forth; and of this the said defendant puts himself upon the country.

The said defendant, B. F. Messenger, for himself further answering, states that he is now the legal owner in fee-simple, and was the legal owner in fee-simple before the commencement of this suit, of the said fractional west one-half of section number thirty, township number sixty-five north, range four west, part and parcel of the lands and tenements in the petition of said plaintiff, Charles Mason, demanded, and is in possession of, and claims the right to hold the possession of, said last aforesaid demanded premises, by virtue of said title in fee-simple being vested in this said defendant in his own right, except two acres and thirty rods, sold by said defendant to D. B. Smith, (before the commencement of this suit,) by deed bearing date September 12th, A. D. 1848, and commencing near the northeast corner of the fractional southwest quarter of said fractional west one-half of section number thirty, township number sixty-five north, of range four west, as will appear on reference to said deed, and which reference said defendant asks the court may have.

Said defendant further states that he sold to Alfred Coles, by deed, (before the bringing of this suit,) eighteen one-hundredths of an acre in the aforesaid fractional quarter-section last above or within described.

The said defendant, B. F. Messenger, for himself further answering, states that he claims that he has a valid subsisting interest, in fee-simple, in and to the aforesaid fractional west one-half of section number thirty, township number sixty-five north, of range four west, part and parcel of the said lands and tenements in the petition of the said plaintiff, Charles Mason, demanded, (except the two pieces or parcels of said lands and tenements before excepted,) by actual, uninterrupted, adverse possession, for the term of twenty-four years before the commencement of this suit, in said defendant's own right, and in right of said defendant's grantors, or those under whom he claims title to said lands and tenements. Said adverse possession commenced to run in the year eighteen hundred and thirty-two, and has continued to run up to the commencement of this suit, on the 27th day of June, A. D. 1856.

The said defendant, further answering for himself, states that the said cause of action did not accrue to the said plaintiff, Charles Mason, within ten years next before the commencement of this action for the recovery of the present and immediate possession of the said lands and tenements,

to wit, the said fractional one-half of section number thirty, township number sixty-five north, of range four west, in the petition of the said plaintiff, Charles Mason, demanded, and that said right of action accrued, if at all, in the year A. D. 1841.

The said defendant, further answering, denies that the said plaintiff is now the legal owner of said fractional west one-half of section number thirty, in township number sixty-five north, of range four west, and said defendant denies that said plaintiff is entitled to the present and immediate possession thereof, as in his said petition demanded.

The said defendant, for himself further answering, states, he denies that John Fowler, William Fowler, and Joel Johnson have at any time had, either before or since the commencement of this suit, any legal claim or interest, by possession or otherwise, in or to the said fractional west one-half of section number thirty, in township number sixty-five north, of range four west, or to any part of the same.

The said defendant, B. F. Messenger, for himself further answering, states that he has no interest, either by legal title or by possession or occupancy, to the fractional southwest one-fourth of section number nineteen, in township number sixty-five north, of range four west. Nor has this defendant had, at any time, an interest therein, either before or since the commencement of this action. Nor has this defendant had, at any time, possession of the same.

A. WILLIAMS & H. T. KYLE,
Attorneys for Defendant B. F. Messenger.

And afterwards, to wit, on the 20th day of June, A. D. 1860, there was filed in the office of the said clerk an amended answer in words and figures following, to wit:

CHARLES MASON
vs.
B. F. MESSENGER, JAMES MAY, ET AL.

1. And now comes said James May, and for answer, so far as relates to the fractional west half of section 30, in township 65 north, range 4 west, in said petition described, says he has not now, nor has he ever had, possession of said premises; that he does not now nor has he ever detained said premises from said plaintiff. nor has he received the rents, issues, or profits thereof, or cut timber, or committed trespasses or injuries of any sort on said property, for five years, or any period whatever, as is falsely charged against him in said petition.

2. And, for answer, so far as relates to the fractional southwest quarter of section nineteen, township sixty-five north, range four west, in said petition described, this defendant says he denies that said plaintiff was at the commencement of this suit, or is now, the legal owner of said premises, or entitled to the immediate possession thereof.

3. And, for further answer, so far as relates to the land last above described, this defendant says he was at the commencement of this suit, and is now, the legal owner of said premises, and was then, and is now, in possession of the same, and was then, and is now, entitled to the immediate possession of the same, because of his said ownership.

4. And, for further answer, this defendant says, he denies that said plaintiff was the legal owner of said premises last above described, and entitled to the immediate possession thereof, at the commencement of this suit.

5. And, for further answer, this defendant says he denies that said

plaintiff is now the legal owner of said premises last above described, and entitled to the immediate possession thereof.

6. And, for further answer, this defendant says he was at the commencement of this suit, and is now, the owner in fee of the premises last above described, and is in possession of and detains the same by virtue of his ownership thereof.

7th. And, for further answer, this defendant says he has a valid subsisting interest in fee in the premises last above described, and is entitled to the immediate possession thereof, under and by purchase and conveyance from one Mary L. St. Amant, a half-breed of the Sac and Fox nation or tribe of Indians.

8. And, for further answer, this defendant says the land last above described is situated on the half-breed tract, in Lee County, Iowa, and that he has a valid, subsisting interest in fee of said premises, and is entitled to the immediate possession thereof, under and by purchase and conveyance from one Mary L. St. Amant, a half-breed of the Sac and Fox tribe or nation of Indians, entitled to a full share or interest in said half-breed tract, under treaty between the United States and said Indians, in 1824, and by law of Congress of 1834, conveying and granting the riversinary interest of the United States in said half-breed tract to the half-breeds of said Indians; the said Mary L. St. Amant, for a valuable consideration, having, in 1839, sold and conveyed the one-half of her interest in said half-breed lands to this defendant, and delivering him the manual possession of said fractional southwest quarter of section 19, township 65 north, range 4 west. And this defendant avers and claims that he has had the peaceable, continued, adverse possession of said premises from thence until now.

9. And, for further answer, this defendant says he has the quiet, peaceable, continued, open, adverse possession, under color and claim of title of the premises last above described and sued for, for ten years immediately preceding the time, to wit, February 13th, 1857, when leave was granted to make this defendant a co-defendant in this suit.

10. And, for further answer, this defendant says he had the quiet, peaceable, continued, adverse possession of the premises last above described and sued for ten years next before the time when he was made a co-defendant to this suit.

11. And, for further answer, this defendant says he, and those under and from whom he derived his rights in the premises, had the peaceable, continued, adverse possession of said premises last above described for twenty years before the commencement of this suit, and for more than twenty years before he was made a defendant of this suit; and of this he puts himself upon the country.

June 20th, 1860.

F. SEMPLE,
Attorney for Defendant James May.

2 There was filed a paper, of which the following is a copy in words & figures following, to wit:

Fort Madison, May 28th, 1860.—District court of Lee County, State of Iowa, at Fort Madison.

CHARLES MASON
vs.
B. F. MESSENGER ET AL. } Action of right.

James May, on his oath, says:

That in the year 1839 he purchased of Mary L. St. Amant, a half-

breed of the Sac and Fox nations or tribes of Indians, the one-half of all her interest in the half-breed tract, in Lee County, Iowa, including about 119,000 acres of land, which will more fully appear by reference to the deed of Mary L. St. Amant, which will be produced on the hearing of this affiant; that at the same time of purchasing said interest, he purchased of Mary L. St. Amant all the house, fences, and improvements on the farm she then occupied, as will appear by her conveyance in writing of such sale and transfer, which will be produced on the hearing of this affiant.

That the farm and improvements referred to were on the fractional southwest quarter of section nineteen, in township sixty-five north, range four west; that he by his agents have ever since he purchased the same in 1839, had possession of the same, except certain parts thereof, which have been settled upon within some five or six years last past by trespassers, claiming under the decree title, as it is commonly called; that J. Fowler is his present tenant, and who resides on said tract, and has resided there for the last five or six years.

That some three or four years ago, as he is informed, a suit was commenced by said Charles Mason against his said tenant, Fowler, but of which this affiant was not informed until some time after the cause had been in court, when D. F. Miller, or the said B. F. Messenger (affiant don't recollect which) informed him of the fact. Said Miller also informed affiant that he had put in the necessary papers and pleadings to protect his interests in the premises so far as the pleadings were concerned, but that he did not wish to appear as counsel for affiant on the trial of the cause because he had so much trouble and annoyance with the half-breed and decree claims and titles for such a number of years that he was quite sick of them and intended as far as possible to avoid them for the future, and he recommended affiant to employ Archibald Williams, esq., as counsel to conduct his defence in said suit. Affiant approved entirely of the conduct of said Miller in the premises in appearing for him and protecting his rights, which were endangered by the suit against his tentant, and, adopting his advice, employed said Williams in said suit and another suit of affiant in relation to said half-breed matters, and paid him several small sums of money, perhaps one hundred dollars in all. Said Miller had formerly, and for one or two years or more, been an agent of affiant, in having charge of the land now in possession of said Fowler, as aforesaid. He had also the charge of and the prosecution of large and valuable money claims of affiant, and was well acquainted with the property and rights of the affiant in possession or litigation, in Lee County, Iowa.

Affiant further shows that in 1839 he resided in Pittsburgh, P'a, and continued to reside there until 1855, when he removed to Davenport, Iowa, where he resided for several years, and then moved to Port Byron, Illinois, where he now resides.

That he is informed and believes said Mason claims title and ownership and right of possession in the land before referred to under and by virtue of the decree title to the half-breed tract, which title was, as affiant is informed and believes, not made on adjudication of rights or titles, but by arrangement, confederacy, and fraud between the parties who had interests secured to them in said decree and said Cha's Mason, the plaintiff in this suit, who, when the decree was rendered, was judge in the Lee district court, and ordered the rendition of said decree. Affiant is also informed and believes said Mason had been acting as the agent, and was the agent of some of the interests allowed by said arrangement in said decree. Affiant has obtained this information from

various sources and believes all of it to be true; and affiant is informed and believes, that by said arrangements as much or more than sixty shares were admitted in said decree by said Charles Mason, judge, as aforesaid, which were entirely spurious, surreptitious, and fraudulent, whilst several good interests, affiant's own among the rest, were not allowed nor protected, as honesty and judicial integrity should have done.

Affiant files herewith copies of two letters of said Mason in relation to his having acted as agent in protecting the interests of a portion of the claims admitted in said decree, and also admitting that spurious interests were admitted in said decree, and which letter, admitting that such spurious claims were allowed, bears date two days after the rendition of said decree, and affiant will produce the original on the hearing of the affiant. Affiant, at the time said decree was rendered, resided in Pittsburgh, P'a, but as he had open, notorious, visible possession, by his tenants, of said tract of land, a considerable part being then under fence and cultivated, a house on it, occupied by his tenant, and as he in 1839 had caused his said deed from Mary L. St. Amant to be recorded in the recorder's office of Lee County, Iowa, he had not apprehended that any judicial action could or would be had, divesting him of his rights, without at least personal notice first given to him.

The said tract of land lies along the banks of the Mississippi River, and adjoining to the city of Keokuk, and affiant is confident in his belief that at least some of the parties in the decree of 1841, and that Judge Mason, when he commenced this suit against Fowler, knew very well that affiant owned a true and valid half-breed interest, by his purchase under Mary L. St. Amant, as aforesaid; also, that Mason and his agent, James L. Estes, knew at the time of the commencement of this suit that affiant was the landlord of said Fowler, yet the parties in the suit for partition, under which said decree was rendered, did not make him a party to said suit, and he never heard one word of the suit for partition until after the decree was rendered, parcelling and dividing the half-breed lands out by bargain and arrangement, as aforesaid, allowing spurious interests to a large extent, and attempting to defraud this affiant and others holding good claims out of their rights. And this affiant believes and charges that the reason why notice was not served on him in this suit was because plaintiff, or his agent, whose name appears to the notice, desired and expected to obtain a judgment on said Fowler, and oust him, and get possession of said land, without affiant's knowledge of the existence of said suit. To show more especially the fraudulent character of said decree title, affiant refers to and adopts as a part of this affidavit the sworn answer or affidivit of John H. Lines, one of the parties in said decree, here on file in this court, in the case of W'm Meek et al. vs. J. Spalding et al., as affiant is informed and believes, of which a copy is hereto annexed. Affiant came to this court two years or more ago, to attend to this suit, and believing that the rights of property, &c., could be best determined in a suit in chancery, where matters of fraud are more usually cognizable and easily sifted and reached, filed his petition, alledging the existence of this suit, representing his rights and equities in the premises, and praying the plaintiff, Mason, should be required to answer, and that he should also be enjoined from claiming title to said premises.

This suit now is set as No. 80 on the chancery side of the court docket of this court; but the said petition is lost, and affiant knows not where it is, but learned yesterday from J. W. Rankin, esq., one of the attor-

neys of said Mason, that it was in his office some time since, and that some one, he did not know who, called and got it out of the office.

Affiant further shows that his counsel, said A. Williams, esq., did, on one occasion, come to this court to look after his interests in the premises, and that recently he has employed F. Semple, esq., who is a resident counsel, to attend to said suits, and prepare them for trial at as speedy a time as possible. Affiant arrived here at the commencement of this court, and cannot find out the situation of his said chancery suit, owing to the loss of said petition and papers.

Said Mason has not, as he is informed by his counsel, amended his petition so as to make this affiant a defendant in this suit legally; and though said Miller appeared and filed an answer for affiant, yet, as said Fowler did not, until the present term of court, file his affidavit, admitting affiant to be his landlord, the default, if any taken, should, as this affiant supposes, have been against said Fowler. Affiant has inquired of the clerk for the answer filed for affiant, and the other papers which authorized the record entry, which placed affiant as a co-defendant of said Messenger in this suit, but was informed that he knows nothing of them, and that the transcript which shows affiant was made such co-defendant was brought to this court at the present term for the first time, and the transcript bears date the 24th day of the present month.

Affiant further shows that he has not now, nor ever had to his knowledge or recollection, possession of that other tract of land, named in said petition, being the fractional west half of section thirty, in township sixty-five north, range four west, nor does he believe said Fowler had possession of it when said suit was commenced. This affiant is anxious to have a speedy trial of this suit, and asks the default for alledged want of answer made and ordered against him this morning be set aside, that he may have a fair trial and impartial judicial determination of his rights in the premises. He firmly believes said Mason has no just title whatever to said premises, and that on a trial this affiant will be enabled to vindicate his said claim and prove his right of title and ownership of the land aforesaid. All affiant asks is simply justice, which can never be attained when record papers are carried off and lost, and decrees are rendered without notice to the true parties in interest, and defaults claimed on technical quibbles.

Affiant further shows that he got possession of said letters of said Mason since the last term of this court, and is now confident that, on the trial of this cause, he will be enabled, by the testimony of witnesses, to prove the truth of said letters as to the allowance of said spurious interests, and that said Mason was present a part of the time in the room where those concerned in concocting the decree had privately assembled, as shown by the affidavit of said Lines.

JAMES MAY.

Subscribed and sworn to May [3d] 10*th*, 1860.

ERIE J. LEECH, *Clerk*,
D. H. LESUER, *Deputy*.

Copy of a letter addressed to Mrs. Sophia Farrar, Galena, Illinois.

BURLINGTON, *August* 12*th*, 1840.

DEAR SISTER: Emily expects to start for Galena in a day or two, and I embrace the opportunity to give you some information in relation to your affiairs in this neighborhood. I have not succeeded in obtaining the interest on the $1,000 in the hands of the Indian agent, although I

have let no opportunity pass without making an effort for that purpose Mr. Beach, the present agent, is disposed to do all he can for this purpose, and will, no doubt, pay over the money as soon as possible. I have spoken to him on the subject of making a different disposition of the money and placing it where it would draw a higher interest, which he was perfectly willing to do. He told me the money was at present loaned either to Davenport or to Gen. Street's son Joseph, of Prairie du Chien, those two individuals having each that sum of money, which had been placed in the hands of the agent, for the benefit of the half-breed children. Mr. Beach did not recollect which of these was Margaret's, but promised me that if I would give him a higher interest than the person who now had it, he would let me have it. I offered him fifteen per cent. This was done as much as anything for the purpose of getting it out of the hands of the present holder, and placing it so that the interest could be more regularly and readily obtained. It has now been nearly three weeks since Mr. Beach left this place for the agency. He promised as soon as he arrived there to ascertain who had the money, and write to him forthwith, and unless he would pay fifteen per cent. per annum for the same, to take it from him and lend it to me. Money, at present, is well worth that amount in this neighborhood.

As to the matter of the half-breed lands, something must now be done in relation to them. A suit for partition was commenced at the last term of the court. In that suit the name of Betsy Farrar is included as one of the undisputed claimants, but neither of the other children, as you will perceive by the enclosed advertisement. I have forgotten the name of the other child. I wish you, therefore, would send me down her name. Let me know also the names of the witnesses, what can be proved by them, and where they live, (mentioning the name of county, in particular.) We shall have to send a commission to some one or more persons residing in their respective counties, to take their testimony. Send me, in each case, the name of proper persons for this purpose, if you know such. I do not suppose it will be necessary to take the testimony of many witnesses. There will probably be no dispute about the facts of the case. The whole matter will principally depend upon a question of law, as to whether there can be any inheritance in cases of this kind. I have no doubt on the subject myself, but I cannot sit in the trial of this case. It will, moreover, very possibly, go to the Supreme Court of the United States, and I cannot tell what may be the opinion of that tribunal, though I think there is not much doubt. You will perceive by the advertisement that the court sits in October. As soon as convenient, and before that time, I wish you would send me the information above sought. It is not absolutely necessary that I should know (before that time) more than the names of the children. Please let me know that immediately. The first Monday in September I shall start on my circuit, and it is possible I shall not return here until after the court in Lee County, though I shall probably do so. Emily will tell you all the news, &c.

Yours, truly,

(Signed) CHARLES MASON.

SOPHIA FARRAR.

P. S.—Since writing the above I have found the deposition of Jesse W. Shull, made a year or two since. This will not prevent the necessity of taking his testimony again in the manner prescribed by our law. It will be necessary to prove by some one the exact age (as nearly as possible) of Mary Ann, the second child. Please write me what that precise age

was, and by whom it can be proved. It will be necessary for us to know, as accurately as possible, what can be proved by each witness, so that we may know how to frame our questions; for they can only answer questions that are asked of them.

TERRITORY OF IOWA, *Lee County, ss:*

District court for said county, April term, 1840.

JOSIAH SPALDING ET AL.
vs.
EUPHROSINE ANTAYA ET AL. } Petition for partition.

Notice is hereby given that a petition was filed on the 14th day of April, A. D. 1840, in the district court of Lee County aforesaid, by Josiah Spalding, Archibald Gamble, Patrick Walsh, Etiesmine Prevost, John and Edward Walsh, H. K. Ortley, Greene Erskine, Joseph Ridgeway, assignees of George Patch, Herman C. Cole, Stephen Gore, John Tumilty, James R. McDonald, Joseph W. Walsh, John O. Rouke, Antoine Garcia, and Margaret, his wife, Angeline Matabone, formely La Guthrie, Michael Tesson, heirs and legal representatives of Otis Reynolds, deceased, heirs and legal representatives of J. A. H. Palmer, deceased, George H. Crossman, and Antoine Le Claire, as petitioners, and against Euphrosine Antaya, Elizabeth Hunt, Eliza O. Perkins, (late Gildersleve,) and formerly Johnson, Mary Murdock, formerly Johnson, Rosella O. Glienn, formerly Johnson, James Muir, Thomas Connelly, and Betsy Farrar, as defendants, and is now pending, wherein the said petitioners pray that a partition be made of the following real estate, to wit:

All that tract of land commonly called the "half-breed tract," situated in Lee County aforesaid, lying betweeen the Mississippi and Des Moines Rivers, and bounded on the north by a line drawn from the northwest corner of the State of Missouri east to the Mississippi River, and containing one hundred and nineteen thousand acres, more or less. And they, the said defendants, and all other persons interested in the property herein described, are hereby required to appear and answer to said petition on or before the next term of the district court of Lee County aforesaid, to be begun and holden on the first Monday of October next, or the proceedings had in the cause thereafter will be binding and conclusive on them forever.

(Signed) JOHN H. LINES,
Clerk of the District Court.

(Signed) REID AND JOHNSON,
Attorneys for Plaintiffs.

P. S.—All persons interested in the half-breed tract as claimants or otherwise, and desirous to obtain information in relation to said tract, will have their requests attended to by addressing them, post-paid, to—

REID & JOHNSON,
Ft. Madison, Lee Co., Iowa.

Copy of a letter addressed to Mrs. Sophia Farrar, care of Capt. H. H. Gear, Galena, Illinois.

BURLINGTON, *May* 10, 1841.

DEAR SISTER: We received a letter from you some three or four weeks since. The only reason we have for not having answered it

sooner is, that I have ever since been absent on my circuit until yesterday, and during a part of the time Angelica has been quite ill; in fact, we both have the ague by turns this spring, so much so that we sometimes almost determine to leave the country and return to one more healthy. I had a chill yesterday, and Angelica one last week. We break them for a few days with quinine, and sometimes for three or four weeks; but commencing about the middle of February, I have had them at intervals ever since, and am beginning to get out of humor. I saw Mr. Beach, the Indian agent, about four weeks since, and endeavored again to get some money for you. He seems desirous of doing all he can in the matter. I think I have before informed you that I proposed to borrow the money of him myself, at more than double the rate of interest it now draws, knowing that I could loan it again so as to save myself; this was in order to secure to you the interest without the trouble you have had thus far to obtain it.

Mr. Beach promised me nearly a year since, that he would have the money upon those terms as soon as he could procure it. He informed me when I last saw him, that the money had been loaned by Gen. Street to his son Joseph, instead of Davenport, as he had before supposed; and that Joseph gave as a reason for not paying over any money, that he had given his note for the money to his father, not as Indian agent, but simply as Gen. Street, and he could not safely pay over any money except to a regular administrator, of which there has as yet been none appointed.

Br. Beach, however, informed me that another of Gen. Street's sons was soon coming down to settle up his father's estate, and, if necessary, to take out letters of administration, when he was in hopes of having our matter arranged. I have no very strong hopes, however, that it will be satisfactorily arranged immediately.

In regard to the half-breed business, I have a better account to give you.

I have just returned from the Lee County court. On Saturday last, at 10 o'clock at night, that whole business was arranged and closed. You know that proceedings were pending to affect a division of that property, after ascertaining who were entitled to shares therein. The obstacles in the way, arising principally from the immense and unknown number of claimants, were so great that I never believed the matter would be brought to a close in less than ten years at the least. All the parties interested seemed to be impressed with the same belief. A successful effort was made at the recent term of the court to effect a compromise. All were impressed with the conviction that it would be far better to admit many spurious claims than to wait the slow progress of a law-suit in order to effect the settlement. After striking out twenty or thirty claims by consent, they all agreed to admit one hundred and one. In this number your two shares were both allowed. The whole tract comprises 119,000 acres, so that your two shares will contain about 2,350 acres, which is now worth at least $10,000. If you can get that amount for it, however, I would by all means sell it, which could be done by obtaining an order of court for that purpose. My reasons for this advice are, that there may be still some difficulty in the matter, though, I trust, nothing very serious. There are some outstanding claims which were not presented, although it is believed that none of these are valid. An effort will, however, probably be made by these claimants to uproot and overthrow the recent settlement. I don't believe they can succeed, but they may give much trouble. Another reason is, that if Margaret should die, you might lose the land en-

tirely; although you would be justly entitled to inherit whatever she possessed, still you are not legally her heir. This might give you difficulty and perhaps occasion a loss of all. If the land were sold and the money loaned out, your risks would be less.

Three commissioners were appointed to divide the half-breed tract into 101 shares as nearly equal in value as possible. They will probably report at the next term of the court, which will be held on the first week of October next. The shares will then be drawn in such a manner as to give every one an equal advantage.

Can't you come down and visit us soon? We are at present having our house plastered, but hope to be through in two or three weeks. We have, however, got two comfortable rooms, at all events. Emily and Angelica want you to come if possible and see the baby, which they think a prodigy. She runs all over the house and is of vast service in assisting to do all manner of housework.

Angelica intended to have written a part of this letter but she is too busy, as it is washing-day; I hope she will make the effort soon; all send love.

Yours, truly,
(Signed) CHARLES MASON.

Mrs. FARRAR.

In chancery.

TERRITORY OF IOWA, *Lee County:*

The separate answer of John H. Lines, one of the defendants, to the bill of complaint exhibited against him and others by W'm Meek and others, in said court.

This defendant, now, and at all times, saving to himself and reserving all and all manners of exceptions which may be had or taken to the errors, uncertainties, and insufficiencies in said bill of complaint contained, for answer thereto, or so much as he is advised, or deemed material to be answed unto, answereth and sayeth he admits that a petition for partition among the claimants of the half-breed tract, as it is commonly denominated, was filed by the persons, and against the persons, in said district court.

And such proceeding were had, that a decree was pronounced thereon, as alleged in said bill of complaint. He also admits that he is one of the parties to that proceeding, his name having been added after the original bill was filed, and he refers to the records and papers of said proceedings on file for further particulars as to the proceedings of said court.

This defendant admits that he had read and knew, from the books in defendant's office, before said petition for partition was filed, that some, if not all, the complainants had an interest in said half-breed lands; he, therefore, cannot deny that complainants had such interests in said tract as alleged in their bill.

The defendant attended at the April term of the district court of Lee County, in 1841, and, until the last day of said term, this defendant supposed that nothing would be done in relation to any of the half-breed claims, as he understood, from the attorneys, that an extra term of court would be held for the purpose of attending to them.

Some time in the forenoon of Saturday, the first day of the district court, D. W. Kilbourne came into my office, (the county recorder's office,) and began to examine the deed books. During his stay in my office I asked if the suit for partition of the half-breed lands would be called up, and anything done. He replied, he thought there would.

About noon, I understood from some of the attorneys, either Rich, Starr, or Greene Erskine, of St. Louis, that a compromise was talked of, and asked me if I had heard of it. I replied that I had not. This was the first that I had heard of it. During the afternoon I was solicited by several of the defendants and their attorneys to come into the compromise. I at first objected, but after some time, at their urgent solicitation, I consented to throw off and bring my claim down to one share.

This defendant was in the room of Mr. Key, the attorney for complainants for the peti[ti]tion for partition, in the afternoon of the last day of the district court, and observed a large quantity of papers lying on the bed in the room, most of them, from appearances, belonging to the New York Company.

During the time I was there the door was kept shut, and when any one knocked at the door the papers were covered up before the door was opened. From the actions and conversation of several of the defendants and attorneys, I believed that it was the intention to keep as many of the half-breed claimants from coming and knowing anything about the compromise as they could. I asked D. W. Kilbourne if Mr. Eno, who had charge of the claims of heirs of John H. Knapp, knew anything about it; I understood from him indirectly that he did not.

After dark I returned to the court-room. The court was called and some business disposed of, and between ten an eleven o'clock the suit commonly called the half-breed suit was called up. The judge asked if they were ready to do anything in the matter; the reply was, they were ready.

A large quantity of papers were filed, and the compromise or understanding was stated. The court then ordered the decree to be entered. I heard no witness called, and no evidence was given in, as I understood, and no written or oral proof of the validity of any claim was offered, to the best of my belief.

Harmann Booth, Samuel B. Ayres, and Joseph Webster were appointed commissioners to make division of said tract, and the court adjourned.

I was recorder of the county of Lee at the time, and *admit* that there were a great many claims to the half-breed lands who had their deeds on record, and who were not in the decree.

The deed-books of said recorder's office were frequently examined by several of the defendants and by their attorneys, previous to the commencement of any proceedings.

I, therefore, believing that great wrong and injury has been done to many persons who reside on said half-breed lands, and others who have valid and just claims; I, also, having good reason to believe that very many of the claims of persons who are in the decree are spurious and bad, and that the decree was obtained by collusion of several of the parties to the decree, (the defendant protesting that he was guilty of no fraud or collusion,) am willing that said decree should be vacated or opened, so that just claims shall be received, and spurious claims rejected, and that complete and ample justice may be done to each and every owner of an interest in said half-breed lands.

This respondent, therefore, prays that his interest, claim, and right in and to said half-breed tract may be assigned to him in severalty, and to all others who may have just claim to said tract; and that complete and ample justice may be done to each and every owner of an interest therein; and that he now prays that he may be dismissed with reasonable costs and charges decreed to him, etc.

(Signed) JOHN H. LINES.

TERRITORY OF IOWA, *Lee County, ss:*

This day John H. Lines made oath before me, the undersigned, that what he has stated in the foregoing manner of his own knowledge is true, and what he has stated from information (if any) he believes to be true.

Sworn to and subscribed before me this 3d day of August, 1842.

(Signed) J. C. WALKER, *Clerk.*

3 And afterwards, to wit, on the 5th day of March, 1863, the following record entry was made in words and figures following, to wit:

THURSDAY, *March 5th*, 1863.

On this day in open court, at a regular term of the district court of Van Buren County, Iowa, it is ordered that a special term of this court be held in the court-house in Keosauqua, in said county, on the third Monday of June, 1863, at 2 o'clock p. m., for the trial of the following causes now on the docket of this court, to wit:

HARVEY HINLEY, SUCESSOR TO W'm Wheatly, *vs.* W'M GALLOWAY ET AL. } No. 14.

JAMES DICKENSON ET AL. *vs.* WILLIAM GALLOWAY ET AL. } No. 15.

CHARLES MASSON *vs.* B. F. MESSENGER ET AL. } No. 41.

FREDRICK PARKS *vs.* EDWARD JOHNSTON. } 43.

ANDREW KEITHLER *vs.* M. D. WRIGHT. } 44.

ANDREW KEITHLER *vs.* M. D. WRIGHT & J. W. RANKIN. } 45.

JAMES CRAYTON *vs.* M. D. WRIGHT. } 46.

JA'S CRAYTON *vs.* JAMES WRIGHT. } 47.

FREDRICK PARKS *vs.* CHARLES MASON. } No. 48.

JOHN BALLANCE
vs.
M. D. WRIGHT & J. W. RANKIN. } No. 49.

CANUTE ANDERSON
vs.
JAMES SPROTT. } No. 50.

JOEL WARFIELD
vs.
ELIZA RIEVES ET AL. } No. 51.

JOHN HEMMINGWAY
vs.
MILES ET AL. } No. 52.

And such other cases as may at this term be designated for or continued to said special term.

It is further ordered, and this by consent of all the said parties given in open court, that twelve jurors of the regular panel, to wit,
31½ Christopher Wilson, Samuel Perrin, Geo. Detwiler, Joseph Rail, Joseph Coalman, Andrew McCullough, J. J. Boyd, J. A. Eddy, James R. Moore, Benjamine Wright, W'm Ford, Russo King, be directed to be in attendance at said special term, and that any sufficiency be supplied of talesmen. Said special term is to be held by the order of this court, but upon the application of all said parties, and more especially for said causes.

In all said causes pl't'ffs have leave to amend their petitions & the def'ts their answers, except in Nos. 14, 15, & 41, where no permission is asked.

(Signed at the end of the day's proceedings.)

H. H. TRIMBLE, *Judge.*

Wednesday, June 17th, 1863.

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY ET AL. } Action of right.

This day this cause came on to be heard on the demurrer of pl't'ff to the original answer of B. F. Messenger in this case, and the court, being advised in the premises, sustains said demurrer.

The demurrer of pl't'ff to the amended answer of B. F. Messenger is also sustained so far as the statute of limitation is plead; the balance of the demurrer was withdrawn by the pl't'ff. The demurrer of the pl't'ff to the answer of James May came on to be heard, and the court, being advised in the premises, sustains said demurrer so far as the answer sets up the statute of limitations; the balance of the demurrer withdrawn by the pl't'ff. And said defendant James May is granted leave till tomorrow morning to ammend.

(Signed at the end of the day's proceeding.)

H. H. TRIMBLE, *Judge.*

4 And afterwards, to wit, on the 18th day of June, 1863, the said plaintiff filed his replication in words and figures following, to wit:

CHARLES MASON
vs.
B. F. MESSENGER ET AL.

And now comes pl't'ff, and denies each and every affirmative allegation in the amended answer of B. F. Messenger not heretofore disposed of by demurrer.

RANKIN, *of Counsel for Pl't'ff.*

CHA'S MASON
vs.
JAMES MAY ET AL.

Plaintiff denies each and every allegation in the first count in the answer of James May; also, in the 3d count, and in the 6th count, and in the 7th count, and in the 8th count, so far as not removed by demurrer, and the allegations therein furnish no legal defence. Pl't'ff denies each and every affirmative allegation in the said answers.

RANKIN, *of Counsel for Pl't'ff.*

And afterwards, to wit, on the 18th day of June, A. D. 1863, def't filed his amended answer in words and figures following, to wit:

District court, Van Buren County, special June term, A. D. 1863.

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY.

5 And now comes James May, and for amended answer and additional answer, on leave of court first obtained for that purpose, files the following in this cause:

1st. He re-avers, affirms, and adopts, as part and parcel of this his amended answer, with each of its negative and affirmative allegations, his present answer on file, and makes the same part and parcel hereof.

2d. He further affirmatively avers that Charles Mason, pl't'ff above named, had, at the time of the institution of this suit, full and complete knowledge and information that this def't was the owner of the land described in this def't's former answer, and was in actual possession thereof, and that he colluded and combined with his tenants, formerly def'ts in this suit, and brought this suit against them for the purpose of getting a judgment against him in ejectment for the land in dispute, without his knowledge of the existence of such suit.

3d. He further states that said pl't'ff, Charles Mason, by his agent, James L. Estes, who acted for him in the institution of this cause, as appears of record, had full, perfect, and complete knowledge that this def't, James May, was the actual owner of the land in dispute, and by his tenants in actual possession thereof, and colluded and combined them, and gave them money to join him in having suit instituted against them without the knowledge of the def'ts, so that a judgement might be had against him in the cause without his knowledge or consent, and without an opportunity to defend his rights in the premises.

4th. He avers that, by reason of the said collusion and fraudulent proposed action and intent of said pl't'ff and his agent, the said Estes, he had no knowledge of the existence of this suit for a long time after the 1st day of July, 1856, and that he therefore ought not to be
6 deprived of his right to plead, as a bar thereto, the statue of limitation in force at the time of the institution thereof. He prays as in his former answer on file.

FRANCIS SEMPLE,
Attorney for James May.

And afterwards the following record entries were made in words and figures following, to wit:

Saturday, June 20th, 1863.

CHARLES MASON
vs.
B. F. MESSENGER, JAMES MAY, ET AL. } Action of right.

And now, on this 20th day of June, this cause came on to be heard; the plaintiff appearing by Rankin & McCrary, and Noble & Strong, his attorneys, and the def'ts by Semple & Kinley, & J. F. Smith, their attorneys. Thereupon, the issue being joined, to try this cause came a jury, to wit, W. H. Ford, James R. Moore, Joseph Coalman, Joseph Rail, Samuel Perrine, Thomas Miller, H. Cochrell, B. P. Marlow, E. J. Cheney, L. W. Thornburg, Obed Stannard, & Abram Aerhart, twelve good and lawful men, who were sworn well and truly to try the issue between the parties, and a true verdict to render, according to the law and evidence given them in court. And the said jury, after listening to the statements of counsel until the hour of adjournment, are dismissed until Monday next, at 2 o'clock p. m.

(Signed at the end of the day's proceeding.)

H. H. TRIMBLE, *Judge.*

7 Monday, June 22d, 1863.

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY ET AL. } Action of right.

And now, on this 22d day of June, this cause came on for further hearing, and the jury heretofore empanelled to try this cause came into court; and the parties being present by their att'ys—the pl't'ffs by Rankin & McCrary and Noble & Strong, and the def'ts by Semple & Kinley & J. F. Smith, their attorneys—and questions of law being argued by counsel before the court until the hour of adjournment, the said jury are dismissed until to-morrow morning at 8 o'clock.

(Signed at the end of the day's proceeding.)

H. H. TRIMBLE, *Judge.*

Tuesday, June 23d, 1863.

CHARLES MASON
vs.
B. F. MESSENGER, JAMES MAY, ET AL. } Action of right.

And now, on this 23d day of June, this cause came on for further hearing, and the jury heretofore empannelled to try the cause came into court;

and the parties being present by their attorneys—the pl't'ffs by Rankin & McCrary and Noble & Strong, and the defendants by Semple & Kinley & J. F. Smith, their attorneys—and the plaintiff having introduced his evidence of title, waived his claim for damages in this suit without prejudice to any other action or proceeding that pl't'ff may introduce to recover the same; and questions being argued by counsel until the hour of adjournment, the said jury are dismissed until to-morrow morning at 8 o'clock.

(Signed at the end of the day's proceeding.)

H. H. TRIMBLE, *Judge.*

8 And afterwards there was filed the following instruction, given by the court in the words and figures following, to wit:

CHALES MASON
vs.
BENJAMIN F. MESSENGER & JAMES MAY AND others.

The pl't'ff in the case asks the court to instruct the jury as follows:

1st. The record of decree of partition, and the deed of Marsh, Lee & Delavan to Charles Mason, offered in evidence in this case, shows the title to the premises described in the petition to be in pl't'ff.

2d. If you find for the pl't'ff, the form of verdict will be,

"We, the jury, find that pl't'ff is entitled to recover the present or immediate possession of the lands described in the petition, and that the same are wrongfully witheld from him."

To the above def't at the time excepted, and was, by agreement, permitted to put his exception on this paper.

And afterwards the following opinion was given by the court in words and figures following, to wit:

The question presented is: Can def't assail the decree already in evidence collaterally for fraud? The discussion has taken a wide range, but the question is narrowed down to the naked proposition: Can def't, who was, at the time of the rendition of decree relied on by pl't'ff, one of the claimants of the half-breed tract, set up fraud against said decree in this proceeding, of time as claimed, that the present pl't'ff was cognizant of and a particeps criminis to such fraud?

This question has not received the light of judicial investigation as often as the profession seem to suppose, and if the matter had not, as I think it has, been determined by our court of last resort when
9 authority, it would be difficult to say what rule was best supported; but I think it has been determined by our own supreme court. If so, it is unnecessary for the purposes of our present enquiry to go beyond that court. The question came before the court when we were a Territory, very early in the history of Iowa, in Reed vs. Webster, (Morris, 467,) wherein the court held that such judge of a court of general jurisdiction could not be impeached collaterally for fraud. Afterwards the point came before the supreme court of the State, in Kear vs. Leighton, (2d Green,) and was determined in the same way. In this latter case the court cite as authority Wright vs. Marsh, Lee, & Delavan, & Reed vs. Webster. Unfortunately for their authority, no such point was made or decided in Wright vs. Marsh, Lee, & Delavan, and the case of Reed vs. Webster was afterwards reversed on appeal to the Supreme Court of the United States. Yet the point was directly presented by

the record and decided by our court in said case of Kerr vs. Lighton; and although the authorities upon which it was predicated fell to the ground, I cannot, setting as a court of regard the decision itself as having also fallen. The court may have had other authorities which the writer of the opinion did not deem necessary to cite; or it might, upon general principles, have so decided had no such cases as Wright vs. Marsh, Lee, & Delevan, & Reed & Webster come under their notice.

It is claimed that this question has been before our supreme court in numerous instances, and been judicially determined; but I have been unable to find any other case in which the point seems to have been directly presented by the record, and to have passed judicial revision. In Wright vs. Marsh, Lee, & Delevan the court say, judgements of a court of general jurisdiction can be impeached only for fraud; they do not affirmatively hold that this can be done, nor do they say in what manner it must be done, if at all. In Killburne vs. Sockman, (8th Iowa,) the
10 court allude to this question, and hold that a party who became interested subsequent to the fraud cannot set it up. They also say further that had the parties been in position to plead the fraud—had they been parties to the fraudulent transaction—it would have presented a different question, and they certainly intimated that, following the decision of the Supreme Federal Court in Reed vs. Webster, they would have held fraud might be set up; but this is obiter dictum, such a point not being presented by the record in that case, and hence cannot justify me in disregarding the decision in Kerr vs. Leighton. I regard myself as bound by the decision of the court, however foolish the reasons or inapplicable the authorities given to support such decision.

A case, analagous in principle, came before the supreme court for its determination. (Arnold vs. Grimes, 2 Green, 88.) The question presented in that case was, whether a patent for lands issued by the U. S. government could, when offered in evidence to establish title in a suit at law, be attacked for fraud in its procurement. The court held that it could not.

In Wright vs. Keithler (7th Iowa, 93) the court says, in speaking of this same decree, "Had he, Keithler, been a party to the decree so alleged to be fraudulent, he might attack and set it aside if it was fraudulent." But it is not said how, whether it could be done collaterally, or whether the party seeking to set it aside, would be compelled to attack it directly in a court of chancery; and if it did, the declaration is at most but dictum, & as such not binding, and certainly should not influence my determination in this case against the decision of that court in the cases already referred to.

Upon either authority or legal philosophy I cannot see, aside from the decisions of our own court, why as between the original parties to the alleged fraudulent transaction, where an instrument claimed to be fraudulent in its inception, being nurtured in falsehood, is offered in
11 evidence either in a court of law or equity, it should not be assailable. None of the reasons for a contrary rule have in my mind much weight as between the original parties to the transaction, but the following, what I regard the rule established by our own court of last resort: I shall exclude the evidence offered for the purpose of impeaching the decree now in evidence for fraud.

(Signed) H. H. TRIMBLE, *Judge.*

And afterwards, on the 24th day of June, 1863, the following record entry, was made in words and figures as follows, to wit:

Wednesday, June 24th, 1863.

CHARLES MASON
vs.
B. F. MESSENGER, JAMES MAY, AND OTHERS.

This day this cause came on for hearing—J. W. Rankin, Henry Strong, & J. C. Knapp appearing as attorneys for pl't'ff; and Semple & Kinley, and J. F. Smith, for def'ts—and the cause having been submitted to a jury of twelve good and lawful men, to wit, W'm H. Ford, James R. Moore, Joseph Coalman, Joseph Rail, Samuel Perrine, Thomas Miller, H. Cocherell, B. P. Marlow, E. J. Chenney, L. W. Thornburg, Obed Stannard, and Abram Aerhart, the said jury returned into court their verdict to wit:

"We, the jury, find that the pl't'ff is entitled to recover the present or immediate possession of the lands described in the petition, and that the same are wrongfully withheld from him."

It is therefore ordered and adjudged that the pl't'ff have and recover of the def'ts the immediate possession of the fractional southwest quarter of section nineteen, and fractional west half of section thirty, in township sixty-five north, of range four (4) west, in Lee county, Iowa.

12 It is further ordered that a writ issue from this court, and that the def'ts be ousted, and the pl't'ff be put in possession of said premises.

It is further ordered that the pl't'ff have and recover of the defendants the costs in this suit, taxed at one hundred and twenty-five $\frac{00}{100}$ dollars; and that execution issue therefor.

(Signed at the end of the day's proceeding.)

H. H. TRIMBLE, *Judge.*

And afterwards, on the 23d day of June, 1863, the def't filed his bill of exceptions in the words and figures following, to wit:

District court of Van Buren County, Iowa, June special term, 1863.

CHARLES MASON
vs.
BENJAMIN F. MESSENGER & JAMES MAY.

Action of right on change of venue from Lee County to Henry County, thence to this county, which is in the 2d judicial district, the said Lee County being in the first judicial district.

Be it remembered that on the trial of this cause, after opening statement of counsel for the respective parties, the pl't'ff offered in evidence the decree or judgment of partition of May 8th, 1841, by copy thereof duly certified under seal of the clerk of the district court of Lee County, Iowa, it being the same court having charge of the records of the territorial court of same county, formerly held at Fort Madison, and in which the said decree of partition was rendered. The record of said judgement as exemplified was in words and figures following, to wit:

13 "TERRITORY OF IOWA, *Lee County, ss:*

"At a district court of the first judicial district of said Territory, begun & holden at the court-house in Fort Madison, in said county, on the fourth Monday, to wit, on the 26th day of April, A. D. 1841—present

Charles Mason, judge—among others were the following proceedings, to wit:

"JOSIAH SPALDING ET AL. *vs.* EUPHROSINE ANTAYA ET AL. } Partition.

"In this case the said defendants having appeared by their council respectively, and filed their answers to the petition, & stated & produced their respective claims, & exhibited their proofs of title, & in some cases the original conveyances, in others authentic copies of conveyance by which the same are held; and their said respective claims, & those of the petitioners, by their council respectively, being by consent submitted to the court for adjudication & partition according to law; and the court being satisfied by sufficient proof that the
14 publication required by the act entitled 'An act for the partition of real property,' have been duly made; and no other persons, known or unknown, having appeared & answered the said petition, or produced or made any claim or any objection to said partition; and the said claims of the said parties now before the court, petitioners & defendants, & their respective proofs and conveyances being by the court herd & considered, it is thereupon, by the consideration of the court & with the consent of said parties, this eighth (8) day of May, A. D. 1841, ordered and adjudged—

"That the claims & rights of said parties, respectively, to the undivided portions of land mentioned & described in said petition amounts in the whole to the number of one hundred & one equal portions.

"That of these the defendants Marsh, Lee, & Delevan, trustees for the claimants, under the articles of association dated October 22nd, 1836, filed in this case, & and as trustees for the persons in-
15 terested under said articles, are entitled to forty-one shares & five-eighths of a share. The defendant John Wright is entitled to one-fourth of a share. The defendant Cyrus Peck is entitled to one-eighth of a share. The defendants Samuel Abbot & Abraham Wendall are entitled to one-half share. The defendant William Phelps is entitled to two shares. The defendant Ebenezer D. Ayres is entitled to one-half share. The defendant William Gillis is entitled to one share. The defendant Henry McKee is entitled to one share. The defendant Garret V. Deniston is entitled to one-half share. The defendant Wilson Overal is entitled to one share. The defendant James L. Schoolcraft is entitled to one-half share. The defendant Elizabeth Hunt is entitled to one full share. The defendant Rosallie O. Gleim is entitled to one full share. The defendant Mary L. Murdock is entitled to one full share. The defendant Eliza O. Perkins is entitled to one full share. The
16 defendant James L. Burtes is entitled to one full share. The defendant Margaret Farrar is entitle to two full shares. The defendant James Muir (H. T. Reid, guardian) is entitled to one full share. The defendant Thomas Connelly is entitled to one share. The defendant John C. Ward is entitled to one-half share. The defendants Abijah Fisher, D. W. Kilbourn, & Henry S. Austin, are entitled to one share. The defendants D. W. Kilbourne & Henry S. Austin are entitled to one share. The defendant Edward Kilbourne is entitled to one-half share. The defendant John Bertram is entitled to one-half share. The defendant Edward Manning is entitled to one-quarter of a share. The defendants James Manning & Sheldon Norton are entitled to one-half share. The defendants Wright, McDonald, & Darrah are entitled to one share &

three-fourths of a share. The defendants Manning & Hearn are entitled to one share. The defendant Augustus Gonville is entitled to one
17 share. The defendant Benjamin Franklin Messenger is entitled to one share. The defendants, the heirs-at-law of Nathaniel Knapp, deceased, are entitled to two shares and seven eighths of a share. The defendant Henry Brouse is entitled to one-eighth of a share. The defendants William, John, & Dalzell Smith is entitled to two shares & one-half share. The defendant William H. Smith is entitled to two shares. The defendant John H. Lines is entitled to one share. The defendant William Price to one share. The defendant Charles Thompson is entitled to [&] one share. And one equal share or undivided part is hereby reserved undivided among the other claimants for the defendant Euphrosine Antaya, in case she should hereafter appear & proove the same.

"And that the said petitioners are, respectively, entitled to the following shares & portions, to wit: Josiah Spalding is entitled to one share & three-eighths of a share; Archibald Gamble is entitled to one share & one-eighth of a share; Patrick Walsh is entitled to one
18 full share; Etiene Prevost is entitled to one-half share; John & Edward Wash are entitled to two shares & seventeen one-hundred-&-twentieth parts of a share; heirs of Henry K. Ortley are entitled to two-fifths of a share; Green Erskine is entitled to one full share & nineteen twenty-fourths of a share; Joseph Ridgway, trustee of George Patch, is entitled to one-third of a share; Herman C. Cole is entitled to one-fourth of a full share; Stephen Gore is entitled to one-eighth of a full share; John B. Sarpy is entitled to one-third of a full share; Edmund H. McCabe is entitled to one-third of a full share; Hugh Tumilty is entitled to one full share; James R. McDonald is entitled to one full share; John O. Rourke is entitled to one-half a full share; Joseph W. Walsh is entitled to one full share; Antoine Garcia & Margaret, his wife, are entitled to one-half share; Angelique Guthrie, now Mattabon, is entitled to one-half share; Michael Fesson is entitled to one full share; heirs of Otis Reynolds is entitled to eleven twenty-fourths of
19 a share; heirs of James A. H. Palmer are entitled to one-third of a share; George H. Crossman is entitled to five-sixths of a full share; Antoine Leclaire is entitled to seven full shares.

"All of which said shares & portions of said parties, petitioners & defendants, are, respectively, by this court hereof adjudged & decreed to be confirmed, and their said shares & interests are hereby respectively confirmed accordingly.

"And it is hereby further ordered & decreed that partition be made, according to the act aforesaid, of the lands mentioned & described in said petition, eqally & fairly & impartially, among the said parties, petitioners & defendants, according to said act; and that the said partition be made according to the plats of the reservation of the Sac & Fox half-breeds, filed and agreed upon by said parties in this case, marked B; and that all other persons whatever shall be hereafter bared & concluded from any title or claim in said lands.

"And this court doth further appoint, as commissioners to make
20 the petition herein decreed, Samuel B. Ayres, Harman Booth, & Joseph Webster, with full power & authority to make the said partition into one hundred & one equal shares of equal value, & report the same to this court, & to do all other acts in relation thereto authorised & required by the aforesaid act; and to make return of said partition of said shares & their proceedings, as required by said act, to the court for confirmation, and such other & further proceedings as to the court shall seem right & according to law.

"It is further ordered & decreed that no partition shall be made under this decree of the lands included in the patent to Thomas F. Reddick, described as follows, to wit: Beginning on the right & southwesterly bank of the Mississippi River, (the most northern corner of this survey,) at a stone sixteen inches wide, eighteen inches long, & two inches thick, from which an elm, twenty-five inches in diameter, bears south twenty-
seven degrees & fifteen minutes east, distant two hundred &
21 thirty-seven links, & an elm, twenty-five inches in diameter, bears south seventy-nine (79) degrees & thirty minutes east, distance three hundred & thirty-six links: thence south thirty-four degrees west, being the northwestern boundary line of this survey; at four chains & forty-one links the line between sections three & ten, twenty-four chains & thirty-one links east of the quarter-section corner, & fourteen chains & fifteen links, leaves the inundated land & water; at seventeen chains & fifty links a road bears nearly east & west, leading from the barracks, lying within this survey, to Fort Madison; from this point the old Pawnee Village bears north sixty degrees west, about three hundred yards, afterwards inhabited by the Sac Indians about the year eighteen hundred & three; the Sac Indians also inhabited the [the] place now occupied by the barracks, on the east side of the creek, which is south sixty degrees east of the point, about three hundred yards distant; at twenty-nine chains & twenty links a branch thirty links wide runs
south; at forty-four chains leaves the brush & scattering timber
22 & enters the smooth prairie, bearing east & west; at sixty-six chains & fifty links an old Indian trace bears south sixty degrees west, & north sixty degrees east, eighty-eight chains, & fifty links to a post (the most western corner of this survey) in a mound, in which are deposited three stones, edge downwards, one of which is eight inches square & two inches thick, & two others about four inches square & two inches thick: thence south fifty-four degrees fifteen minutes east, being the southwestern boundary line of this survey; at seventeen chains & twenty-three links intersects the line between ten & fifteen, thirty-two chains and sixty links east of the corner to sections nine, ten, fifteen, & sixteen, to a post, five inches in diameter, in a mound five feet square at the bottom, & two feet at the top, under which mound is deposited three small stones, each about four inches square, & one of them three inches & the other two two inches thick; at thirty-one chains & fifty links a path bears north & south, leading
from St. Francisville to the afforesaid barracks at the head of the
23 Rapids of the Mississippi; at thirty-nine chains a narrow valley runs allong the foot of the bluff; at fifty-three chains & fifty links leaves level praira & enters the foot of the bluff; at sixty chains & fifty links, the top of the bluff; at seventy-six chains & twenty-three links intersects the line between sections fourteen & fifteen, five chains & twenty-eight links north of the quarter-section corner on said line, at a post five inches in diameter, two feet in the ground, from which an elm, (old mark,) ten inches in diameter, bears south fifty-two degrees east, distant one hundred & sixty links, & a burr oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links, eighty chains, to a post eight inches in diameter, (the most southern corner of this survey,) two feet in the ground, from which a burr oak, (marked S. 14, T. 66, R. 5 W.,) twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-
eight links, & an elm, twenty-five inches in diameter, (marked
24 with a notch & blaze,) bears north sixty-four degrees & thirty minutes west, distant one hundred & fifteen links: thence north

thirty-four degrees east, being the southeastern boundry line of this survey; at twenty-five chains & ninety-seven links, a black oak, twenty-four inches in diameter, leaves the praire & enters the scattering timber, bearing east & west; at thirty-five chains & forty-one links a black oak, twenty-five inches in diameter; at forty-four chains & fourteen links intersects the line between sections eleven & fourteen, (fifty-two chains & eighty-three links west of the corner to section eleven, twelve, thirteen, & fourteen,) at a post five inches in diameter, from which an elm, twelve inches in diameter, bears south eighty-three degrees thirty minutes east, distant forty-one links, & an elm, ten inches in diameter, bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains & seventy-eight links the top of the bluff bears east & west eighty-eight chains & fifty links to a stone thirty inches long, sixteen inches
25 wide, & eight inches thick, three inches in the ground, the edge in the direction of the line, being the most eastern corner of this survey, on the right & southerly bank of the Mississippi, from which [a] stone an elm, ten inches in diameter, marked J. S., bears north fifty-eight degrees west three chains & fifty links: then north sixty-nine degrees west five chains; at twenty links a branch, twenty links wide, runs from the southwest: thence north eighty-five degrees west; at five chains & eighty links, a slough: thence north sixty-five degrees west; at three chains & eighty-seven links, the left bank of the mouth of the slough, [thence north sixty-five degrees west; at three chains & eighty-seven links, the left bank of the mouth of the slough,] into which a small stream flows from the south; nine chains seventy-four links leaves the timber, extending southwardly: thence north fifty-six degress west; at seven chains the garrison, the course of which is south seventy degrees west eleven chains, nearly opposit the centre of the garrison: thence north thirty degrees west sixteen chains & fifty links; at seven chains & twenty-five links, a stable, one hundred links to the left,
26 which was formerly used by the soldiers of this station: thence north fifty-three degrees west six chains & fifty links to the south side of a slough in overflowed land at the mouth of a creek: thence north three degrees west, crossing the creek, eleven chains & eight links to the place of beginning, until the further orders of this court, without the consent of the heirs of said Reddick.

"TERRITORY OF IOWA, *Lee County, ss:*

"I hereby certify the foregoing to be a true & complete transcript of the record of the decree in the case of Josiah Spalding & others versus Euphrosine Antaya & others for a partition of the half-breed lands, as fully & completely as the same remains of record in my office.

"In testimony whereof I have set my hand & affixed the seal of the district court for said county the 2nd day of June, A. D. 1841.

[SEAL] (S'd) "O. S. X. PECK, *Clerk.*"

27 To this def't objected, on the single ground that the court rendering it, to wit, the district court of Lee County, Iowa Territory, as constituted on the 8th day of May, 1841, of which Charles Mason, pl't'ff herein, was sole judge, had not jurisdiction of the subject-matter, nor of the parties, and particularly of James May, def't. Two reasons were assigned by def'ts in support of this position: First, the requirements of the partition law of Iowa Territory, approved 4th January, 1839, under which the partition judgement was rendered, were not complied with by publication and proof of publication of the notices pointed out therein; and, second, that the law providing the manner of bring-

ing suit for partition, and acquiring jurisdiction over the owners of land who were unknown or not found, was unconstitutional, and that all proceedings had under it in respect to acquiring jurisdiction over parties who were joint owners of land were void.

After full argument and consideration of the question raised, in both its aspects, the court overuled the objection and permitted the exemplification of the said decree, of judgement record, to go to the jury as an evidence of title in pl't'ff, to which def't at the time excepted in due form of law.

The said record showing that the land described in the pleadings was allotted in said partition record to Marsh, Lee, & Delevan, trustees, &c., &c., pl't'ff next offered a deed of conveyance from Marsh, Lee, & Delevan to pl't'ff, Charles Mason, covering the land in dispute, which is permitted to go to the jury as part of pl't'ff's title, without prejudice, however, to the foregoing exceptions, and subject thereto, all of which is consented to by pl't'ff.

Whereupon def'ts' counsel moved the court to order an entry of
28 nonsuit of pl't'ff, on the ground that he did not give any evidence of derivation of title from the government of the United States, or from any State, but relied on the said judgement record as his only source of title.

Said motion, on hearing and consideration, was overruled by the court, & said ruling at the time was excepted to by def'ts, who prayed to have his first bill of exceptions signed by the court and made part of the record, which is accordingly done.

(Signed) H. H. TRIMBLE, *Judge.*

And afterwards, on the 24th day of June, A. D. 1863, the def't filed his bill of exceptions in the words and figures following, to wit:

In district court of Van Buren County, Iowa, at June special term, 1863.

CHARLES MASON
vs.
BENJAMIN F. MESSENGER & JAMES MAY. } Action of right.

On change of venue from Lee County to Henry, in the 1st judicial district, & on further change to Van Buren, in the 2d judicial district.

Be it remembered that on the trial of this cause, after the plaintiff had offered his evidence of title, and after settlement of def'ts' 1st bill of exceptions, and after pl't'ff had rested his case, the def'ts offered in evidence the treaty made between the government of the United States, on the one side, and the Sac & Fox nations or tribes of Indians, at Washington City, on the 4th day of August, 1824, by which the land in dispute, with other land, is reserved by said tribes in said treaty for their half-breeds as a class, as is in said treaty set forth.

He next offered in evidence an act of Congress of the United States,
29 approved June 30, 1834, by which the reversionary interest of the United States was given to the said half-breeds, and by which def'ts claimed they acquired a full fee-simple title to the reservation, and to the land in dispute.

At this point pl't'ff enquired the purpose and intent of def't in producing such testimony, to which def't in reply said he offered them with a view to follow them up with certain facts tending to show that the decree or judgement relied on by plaintiff was obtained by collusion and fraud of pl't'ff and others, and to invalidate the same as evidence in the cause by reason of such fraud.

To the introduction of this, or any and all evidence tending to impeach said record for fraud, and to render it incredible as evidence in the case, pl't'ff at the time objected, stating they relied on said decree as the foundation of their title, and that at law it could not be thus attacked.

After argument of counsel, and full consideration by the court, the court sustained the objection and ruled that the said decree was not liable to such attack, and refused to permit the evidence to go to the jury.

Def'ts then further offered to prove that def't James May, one of def'ts, purchased the one undivided half of one full share in the reservation of land in the treaty mentioned, on the 3d day of April, 1839, for the consideration of seven hundred dollars, from one Mary Louisa St. Amant, who was a genuine half-breed of Sauc tribe of Indians, and entitled to one full share in said half-breed reservation; also that, at the time of purchase as above, the said Maria Louisa St. Amant resided on said reservation, and on the land in dispute, and had a house and improvements thereon, and that she sold at same time to said def't May all of said improvements for a full and valuable consideration, and delivered possession thereof to him, and that he has been in possession ever
30 since; also that at that time he resided at Pittsburgh, Pennsylvania, and had never been a resident of Iowa Territory or State, and is a non-resident now; also that def't Messenger bought of one Maria Gonville, a genuine half-breed of the said tribe of Indians, one full share of said reservation, for the sum of about eighteen hundred dollars, and from Agustus Gonville, a brother of said Maria, one-half of a full share for $900, on or about 30th day of May, 1839; also that in the year 1840 said def't Messenger purchased an improvement and possession on the land covered by his answer, entered into possession thereof, and has been in possession ever since, and is in possession now, and that those under whom he claims said possession had begun said improvements as early as 1832; also that at the time of such purchase the said def't Messenger and said Gonville resided in the State of Illinois, about two hundred and fifty miles from the land in question, and continued so to reside till after May, 1841; also that each of said def'ts put upon record in the proper office in Lee County, Iowa Territory, their respective deeds for the rights & lands so bought by them.

They then offered to prove that the 1st legislative body that assembled in Iowa Territory, at its session of 1838–'9, by resolution asked the judges of the supreme court of the Territory to furnish them drafts of laws on the various subjects of legislation; that at that time pl't'ff, Charles Mason, was a district judge in said Territory, in whose district was included the county of Lee, and the reservation of land aforesaid, and by virtue of his office was chief justice of the supreme court of the Territory; that under said resolution, and as chief justice of the State, he drafted the partition law of the Territory, passed at that session,
31 and approved 4th day of January, 1839, and under which the partition judgement offered by him as evidence of his source of title in this case was rendered; that in drafting said law he conceived the purpose of fraudulently speculating in said half-breed lands, and drew the same so as to authoriz[ing] the [opening] *issuing?* of a notice by the court, and under its order, addressed to persons interested in the lands, but without naming them, or either of them, to be published in newspapers as provided by said act, and which might and would be held by the court to be sufficient notice to authorise a default against them, and be the means of taking from them their rights in said reservation unless they should hear of said notice, come in under it, and protect their rights.

36 STATE OF IOWA, *Van Buren County, ss:*

I, John A. Miller, clerk of the board of supervisors in and for said county and State, do hereby certify that the foregoing are true and correct copies of the petition of pl't'ff, answer and amended answer of def'ts, affidavit of James May, pl't'ff's replication, record entries, instruction, opinion, and bills of exception, in a cause entitled "Charles Mason vs. Benjamin F. Messenger & James May," as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at Keosauqua this 1st day of March, A. D. 1866.

[SEAL OF COURT.] (Signed) JOHN A. MILLER,
Clk Dist. Court.

[5-c't rev. stamp canceled: J. A. M., Mar. 17, '66.]

37 And afterwards, to wit, on the 9th day of April, A. D. 1864, the following appears of record, to wit:

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY, APP'L'TS. } Appeal from Van Buren Co.

This day this cause coming on for hearing was submitted to the consideration of the court on oral and printed argument of counsel.

And afterwards, to wit, on the 6th day of December, A. D. 1864, the following order was made of record, to wit:

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY, APP'L'TS. } Appeal from Van Buren County.

This case having been submitted to the consideration of the court, and the court, being now sufficiently advised, in the premises, find there is no error in the judgment and proceedings in the district court, and file their written opinion, (Lowe, J., took no part in the consideration of this case.) It is therefore considered by the court that the judgment of the court below be affirmed, and that a writ of procedendo issue accordingly, and that the appellee have and recover of the appellants his costs in this behalf laid out and expended at this court, taxed at $, and that execution issue therefor.

38 *Copy.*

In the supreme court of the State of Iowa.

CHARLES MASON
vs.
BENJAMIN F. MESSENGER & JAMES MAY. } Decided in favor of pl't'ff at December term of said court in 1864.

Filed Feb. 5th, 1866.

L. KINSEY, *Clk.*

STATE OF IOWA, *County of Polk, ss:*

I, James May, on my oath duly administered, state that I am one of def'ts in the suit entitled as at the head of this affidavit; that my co-def't Benjamin F. Messenger, since the trial of this cause in this

court, at December term, 1864, has departed this life, having made a will which has been admitted to probate in Lee County, Iowa, by virtue whereof his daughter Elisa Jane Messenger, inter-married with Messenger, succeeds to all his rights in the suit above described; that said cause was, by the parties and attornies in their employ, prepared for the special purpose of testing a legal question raised therein, in the Supreme Court of the United States; said question is upon the constitutionality of the partition law of Iowa Territory, upon which pl't'ff's title to the land in controversy is founded, said cause being an action of right; the constitutionality of said partition law was sustained by this court; that the present session of this court being ready to do so, I came to the capitol with my attorney, F. Semple, for the purpose of taking the necessary steps to remove said cause from this court to the Supreme Court of the United States, as originally proposed and intended; that upon application to the clerk of this court, last week, for the
39 papers in the cause, and for certified copy thereof, for purposes indicated, the same could not be found; that myself and attorney, acting upon every impulse of their own and suggestions of others, have exhausted all means within their power to find the same, but have been unable to do so; they have been kindly and efficiently aided by the clerk of this court, the reporter thereof, and others, but without result; that, as I am informed and believe, the original papers in the cause are on file in the office of the clerk of the district court in and for the county of Van Buren, Iowa, and can be with a little expense and labor substituted, except perhaps the assignment of errors in this court.

I am advised by counsel, and believe truly, that said assignment of errors can be substituted under the supervision of this court in such manner as to protect the rights of all parties, and without prejudice to any one interested in this cause.

Def'ts pray the court for an order to substitute a new certified copy of the original papers now on file in the court below, in the office of the clerk of this court, they paying the expense thereof.

They also pray that Elisa Jane Messenger, and her husband, Messenger, be substituted as def'ts in place of Benjamin Messenger, now dead.

And they will ever pray, &c.

(Signed) JAMES MAY.

Sworn to and subscribed by James May before me this 5th February, 1866.

(Signed) LEWIS KINSEY, *Clk.*

40 And afterwards, to wit, on the 4th day of February, A. D. 1866, the following was ordered to be made of record, to wit:

CHARLES MASON
vs.
B. F. MESSENGER & JAMES MAY, APP'L'T. } Notice to substitute other def'ts.

And now comes the appellants and move the court to substitute Eliza Jane Messenger and husband instead of Benjamin F. Messenger, deceased, and for leave to substitute new papers; and the court, having examined the evidence on file and being fully advised in the premises, sustains said motion, and it is therefore hereby ordered that said Eliza Jane Messenger and Messenger, her husband, be substituted for and succeed to all the rights of the deceased def't, Messenger, and that

defendants have leave to substitute new papers instead of those lost, certified from the files of the court below, whence the case was appealed, they paying the expense thereof, the same to be done in ninety days from the date of this order.

41 In supreme court of Iowa.

CHARLES MASON
vs.
BENJAMIN F. MESSENGER AND JAMES MAY. } Appeal from Van Buren County.

Judgment below affirmed and opinion pronounced Oct. 20th, 1864.

I, Chester C. Cole, of said court, with the consent thereof, and by authority of law vesting in me the power to do so, hereby certify that on the final hearing thereof in the above court, it being the court of last resort in the State, the validity of the partition law of Iowa Territory, approved January 4th, 1839, was drawn in question, on the ground that the same was in conflict with the ordinance of 1787, the Constitution of the United States, the treaties and laws thereof, the objections thereto overruled, and the statute held to be valid against the rights and interests of defendants as claimed by them.

Witness my hand this 6th day of November, 1869.

CHESTER C. COLE,
Judge Supreme Court of Iowa.

42 I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing written and printed matter contains a full, true, and complete copy of the petition of plaintiff; answer and amended answer of defendants; affidavit of James May; plaintiff's replication; record entries; instructions; opinion; bills of exception, and certificate of Justice Cole, together with the proceedings of the supreme court of Iowa in the premises, as full, true, and complete as the same now remain on file and of record in my office.

Witness my name and the seal of said court hereto affixed. Done at the city of Des Moines this 6th day of November, A. D. 1869.

[SEAL.] C. LINDERMAN, *Clerk.*

43 THE UNITED STATES OF AMERICA:

To Charles Mason, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein Benjamin F. Messenger & Eliza Jane Messenger and James May are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chester C. Cole, of the supreme court of the State of Iowa, this sixth day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

CHESTER C. COLE,
Judge Supreme Court of Iowa.

44 On this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared William Maynadier before me, the subscriber, Edmund F. Brown, United States Commissioner, and makes oath that he delivered a true copy of

the within citation to Charles Mason in person, at his office in Washington City, D. C.

W'M MAYNADIER.

Sworn to and subscribed the twelfth day of November, A. D. 1869.

[SEAL.] EDW. F. BROWN,
Notary Public & U. S. Commissioner.

45 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Benjamin F. Messenger and Eliza Jane Messenger and James May, [are] plaintiffs in error, and Charles Mason, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their valid-

46 ity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Benjamin F. Messenger & Eliza Jane Messenger and James May, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

GEORGE B. CORKHILL,
Clerk of the Circuit Court of the United States.

Allowed by—

CHESTER C. COLE,
Judge Supreme Court of Iowa.

(Indorsement on cover:) No. 353. B. F. Messenger, E. J. Messenger, and James May, plaintiffs in error, vs. Charles Mason. Iowa Supreme Court.

Filed 11th December, 1869.

REC. 353—3